

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MARY JILL ALLGEYER

Plaintiff,

v.

CITY OF CINCINNATI, et al.,

Defendants.

Case No. 1:16-cv-1128

McFarland, J.  
Bowman, M.J.

**MEMORANDUM OPINION AND ORDER**

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed a complaint against the City of Cincinnati and two individuals. Pursuant to local practice, this case was referred to the undersigned magistrate judge. See *generally* 28 U.S.C. § 636(b). Presently pending is an untimely “summary judgment” motion filed by Plaintiff. (Doc. 34). For procedural reasons, the motion is denied.

**I. Background**

This case was filed in December 2016 and the Court entered a calendar order on March 30, 2017. After judgment was granted to the two individual defendants, the Court vacated the original deadlines and entered an amended calendar order, which included a dispositive motion deadline of January 4, 2019. (Doc. 20). The sole remaining Defendant complied with that deadline and moved for summary judgment.

More than a year ago, on April 1, 2019, the undersigned recommended that the Defendant’s motion be granted and that this case be dismissed. (Doc. 30). Plaintiff filed objections to that Report and Recommendation (“R&R”), to which the City filed a

response. However, a final ruling on the objections and R&R has been delayed for administrative reasons; namely, the recent transfer of the case to a new presiding district judge.

Ten and a half months after the deadline for filing dispositive motions, and nearly eight months after the R&R recommending that judgment be granted in favor of the City and that this case be dismissed, Plaintiff filed a new 41-page motion. Plaintiff's motion is captioned as a "motion for leave of court for plaintiff's summary judgment on pleadings granting relief." (Doc. 34). Despite a caption implying that Plaintiff is seeking permission to file her motion out-of-time, the contents of the motion give no such indication.

## **II. Analysis**

The Defendant City has filed a response based primarily upon the untimeliness of the motion. The City additionally suggests that the motion "appears to relitigate claims previously dismissed by this Court, discovery disputes already decided..., and legal arguments which are the subject of Magistrate [Judge] Bowman's April 1, 2019 Report and Recommendation." (Doc. 35 at 2). The City requests leave to flesh out these arguments should this Court grant Plaintiff leave to consider her untimely motion. Plaintiff filed no reply to the City's response.

Pursuant to Rule 16(b)(4), Fed. R. Civ. P., a scheduling order may be modified "only for good cause and with the judge's consent." Plaintiff's motion fails to show good cause for filing her motion so many months beyond the court's established deadline. Without addressing the merits, the undersigned concludes that the motion should be denied on procedural grounds. Even if Plaintiff had attempted to show "good cause" for her failure to comply with the scheduling order, the undersigned still would deny the

pending motion as untimely based upon the pending R&R that recommends summary judgment to the Defendant. The undersigned forewarns Plaintiff that any additional motions will be denied on the same procedural grounds unless or until the presiding district judge rejects the pending R&R,

**III. Conclusion and Order**

Accordingly, **IT IS ORDERED THAT:**

Plaintiff's motion for leave of court (Doc. 34), herein construed as a motion seeking leave to file an untimely motion for summary judgment, is **DENIED**.

s/ Stephanie K. Bowman  
Stephanie K. Bowman  
United States Magistrate Judge